

Remarks/Arguments

Applicant would like to thank Examiners Ramana and Robert for the courtesies extended to the Applicant's representatives at the interview summarized above.

Reconsideration of the above-identified application in view of the present amendment is respectfully requested.

By the present amendment, claims 1 and 41 have been amended. Allowance of claims 5-7 and 16-31 is noted.

Claims 1, 8-15 and 32-41 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,440,137 to Horvath et al. Claims 32-40 also stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite.

It is respectfully submitted that claims 1, 8-15, and 32-41 are allowable. Specifically, claim 1 recites an apparatus including a longitudinal member connectable with a bone portion. A fastener engageable with the bone portion having a longitudinal axis connects the longitudinal member to the bone portion. A housing has a first passage through which the longitudinal member extends. The housing has a second passage with a longitudinal axis extending transverse to the first passage. The fastener extends through an opening in the housing into the second passage and is movable relative to the housing. The longitudinal axis of the fastener is positionable in any one of a plurality of angular positions relative to the longitudinal axis of the second passage. A spacer received in the second passage of the housing is engageable with the fastener and the longitudinal member. A member fixedly connected to the housing extends from the housing into engagement with the spacer. The member applies an axial force to the spacer to maintain the

spacer in frictional engagement with the fastener to prevent relative movement between the fastener and the housing when the longitudinal member is disengaged from the spacer and the spacer engages the fastener. The fastener and the housing are manually movable relative to each other in opposition to the frictional engagement when the longitudinal member is disengaged from the spacer. A clamping mechanism clamps the longitudinal member, the spacer, and the housing to the fastener to prevent movement of the fastener relative to the housing. None of the cited prior art describes or suggests an apparatus as set forth in claim 1.

U.S. Patent No. 6,440,137 to Horvath et al. discloses a fastening apparatus with a fastener body 10. The body 10 has a groove 30 for receiving a rod 40. A threaded shaft 110 is pivotable relative to the body 10. A washer 120 has a spherical surface 126 that engages a spherical surface 112 on the shaft 110. Inwardly protruding upsets 12 on the body 10 engage grooves 122 on the washer 120 to capture the washer within the fastener body.

The inwardly protruding upsets 12 on the body 10 engage the grooves 122 on the washer 120 to capture the washer within the fastener body, see column 3, lines 27-30. The Horvath et al. patent does not describe or suggest that the upsets 12 apply an axial force to the washer 120 to prevent relative movement between the shaft 110 and the body 10 when the rod 40 is disengaged from the washer 120 and the washer engages the shaft. Accordingly, the Horvath et al. patent does not describe or suggest an apparatus as set forth in claim 1. Thus, claim 1 is allowable.

Claims 8-15 depend from claim 1 and are allowable for the specific recitations therein and for the same reasons as claim 1.

Claim 32 recites an apparatus including a longitudinal member connectable with a bone portion. A fastener engageable with the bone portion having a longitudinal axis connects the longitudinal member to the bone portion. A housing has a first passage through which the longitudinal member extends. The housing has a second passage with a longitudinal axis extending transverse to the first passage. The fastener extends through an opening in the housing into the second passage and is movable relative to the housing. The longitudinal axis of the fastener is positionable in any one of a plurality of angular positions relative to the longitudinal axis of the second passage. A spacer received in the second passage of the housing is engageable with the fastener and the longitudinal member. A member fixedly connected to the housing extends from the housing into engagement with the spacer to maintain the spacer in frictional engagement with the fastener. The member includes means for preventing relative movement between the fastener and the housing when the longitudinal member is disengaged from the spacer and the spacer engages the fastener. The fastener and the housing are manually movable relative to each other upon application of a force in opposition to the frictional engagement when the longitudinal member is disengaged from the spacer. A clamping mechanism clamps the longitudinal member, the spacer, and the housing to the fastener to prevent movement of the fastener relative to the housing. None of the cited prior art describes or suggests an apparatus as set forth in claim 32.

It is respectfully submitted that claims 32-40 are not indefinite.

35 U.S.C. §112, paragraph 6, states that an element in a claim for a combination may be expressed as a means or step for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be

construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof. Thus, claims 32-40 are not indefinite.

As discussed above, the inwardly protruding upsets 12 on the body 10 described in the Horvath et al. patent engage the grooves 122 on the washer 120 to capture the washer within the fastener body, see column 3, lines 27-30. The Horvath et al. patent does not describe or suggest that the upsets 12 prevent relative movement between the shaft 110 and the body 10 when the rod 40 is disengaged from the washer 120 and the washer engages the shaft. Accordingly, the Horvath et al. patent does not describe or suggest an apparatus as set forth in claim 32. Thus, claim 32 is allowable.

Claims 33-40 depend from claim 32 and are allowable for the specific recitations therein and for the same reasons as claim 32.


Claim 41 recites an apparatus including a longitudinal member connectable with a bone portion. A fastener engageable with the bone portion having a longitudinal axis connects the longitudinal member to the bone portion. A housing has a first passage through which the longitudinal member extends. The housing has a second passage with a longitudinal axis extending transverse to the first passage. The fastener extends through an opening in the housing into the second passage. The housing is movable relative to the fastener. The longitudinal axis of the second passage is positionable in any one of a plurality of angular positions relative to the longitudinal axis of the fastener. A spacer received in the second passage of the housing is engageable with the fastener and the longitudinal member. A member fixedly connected to the housing extends from the housing into engagement with the spacer. The member applies an axial force to the spacer and

holds the spacer in frictional engagement with the fastener. The member holds the longitudinal axis of the second passage of the housing in any one of the plurality of positions relative to the longitudinal axis of the fastener when the longitudinal member is disengaged from the spacer and the spacer engages the fastener. The fastener and the housing are manually movable relative to each other in opposition to the frictional engagement when the longitudinal member is disengaged from the spacer. A clamping mechanism clamps the longitudinal member, the spacer, and the housing to the fastener to prevent movement of the fastener relative to the housing. None of the cited prior art describes or suggests an apparatus as set forth in claim 41. Thus, claim 41 is allowable.

In view of the foregoing, it is respectfully submitted that the above-identified application is in condition for allowance, and allowance of the above-identified application is respectfully requested.

Please charge any deficiency or credit any overpayment in the fees for this amendment to our Deposit Account No. 20-0090.

Respectfully submitted,


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